

Panaji, 27th September, 2005 (Asvina 5, 1927)

SERIES II No. 25

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

Workman/Party-I - Absent.

Employer/Party-II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated 17-7-2003.

Notification

No. 28/1/2003-LAB

AWARD

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 17-7-2003 in reference No. IT/67/99, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th August, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/67/99

Shri C. S. Dewedi,
Rep. by The President,
Kamgarancho Ekvott,
Gurudatt Building, 3rd floor,
Dr. Dada Vaidya Road,
Panaji-Goa.

V/s

M/s. Sagun Extrussions Ltd.,
Thivim Industrial Estate,
Karaswada, Bardez-Goa.

.... Workman/Party I

.... Employer/Party II

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 18-6-1999 bearing No. IRM/CON/ /MAP/(39)/98/3056 referred the following dispute for adjudication of this Tribunal.

- Whether the action of the management of M/s. Sagun Extrussions Limited, Thivim Industrial Estate, Karaswada, Bardez-Goa, in refusing employment to Shri C. S. Dewedi, workman, with effect from 13-5-1998, is legal and justified?
- If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/67/99 and registered A.D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party-I (for short "workman") filed his statement of claim at Exb.-3. The facts of the case in brief as pleaded by the workman are that the employer/Party-II (for short "employer") is engaged in the business of manufacture of packaging materials of various types, lamination work printing work, slitting work etc. and it has its factory situated at Thivim Industrial Estate, Karaswada, Bardez-Goa. That it has a sister concern by name M/s. Pushparti Packs Limited operating from the same shed allotted to it by IDC/EDC and the said sister concern also carries on the same type of business. That the workman was employed as an Extruder operator since 10-7-94 vide letter of appointment dated 2-7-94. That initially the workers of

the employer and the said M/s. Pushparti Packs Ltd. were not the members of any trade union and since they were being harassed and their wages and service conditions were poor they decided to become the members of the Union called Kamgarancho Ekvott and the employer vide letter dated 8-5-98 was informed about the unionisation of their workforce. That the workman was elected as the President of local union committee and employer was informed about this fact and was asked to treat him as a protected workman as per the provisions of Industrial Disputes Act, 1947. That on learning about the formation of the union on 13-5-98 the employer refused employment to the workman when he reported for work as usual. That aggrieved by this decision of the employer the workman approached his union and the said union vide letter dated 14-5-98 raised an industrial dispute with the employer as well as with the Conciliation Officer and Asst. Labour Commissioner, Mapusa-Goa. That the employer did not reply to the said letter of the union nor attended the conciliation proceedings. The workman contended that termination of his service is in violation of Section 25-F and 25-G of the Industrial Disputes Act, 1947 besides being malafide vindictive and by way of victimisation for trade union activities. The workman therefore prayed that he may be ordered to be reinstated in service with full back wages.

3. The employer filed written statement at Exb.-4. By way of preliminary objections the employer stated that the reference is not maintainable and is bad in law for the reasons stated in para 1 of the written statement. The employer stated that the workman was working in a supervisory capacity. The employer stated that at no point of time any worker was the member of any trade union. The employer denied that the workers were harassed or that their wages and service conditions were poor. The employer denied that its workers were the members of Kamgarancho Ekvott. The employer denied that the workman was refused employment on 13-5-98. The employer stated that on 11-5-98 the workman had committed grave and severe acts of misconduct of abusing and threatening the Managing Director and as such he was issued a letter of suspension pending enquiry which he refused to accept. The employer stated that the workman and the union raised false industrial dispute just to create a false record of refusal of employment. The employer denied that no reply was sent to the letter dated 14-5-98 or that the conciliation proceedings were not attended. The employer stated that from 13-5-98 onwards the workman has not reported for work and has not collected his 12 days wages. The employer stated that the workman is self employed. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.-5.

4. On the pleadings of the parties the issues were framed at Exb.-6 and thereafter the case was fixed for recording the evidence of the workman. Sufficient opportunities were given to the workman to lead his

evidence in support of his case that his services were illegally terminated by the employer. Inspite of the opportunity given no evidence was led by the workman. Infact the workman did not attend the proceedings right from the time when the case was fixed for the evidence of the workman on 27-4-2000. Last opportunity was given to the workman on 10-10-2002 to lead evidence on 2-12-2002. However the workman remained absent and Shri Subhash Naik who was representing the workman submitted that he wants to withdraw from the case after giving proper notice to the workman. Accordingly on 9-6-2003 Shri Subhash Naik filed application dated 9-6-2003 for permission to withdraw his appearance on behalf of the workman. Along with the said application he produced an envelope consisting the registered A.D. notice which he had sent to the workman by post and which was returned unserved. He also produced the copy of the notice given by him to the workman. Since Shri Subhash Naik had sent the notice to the workman on his last known address he was permitted to withdraw his appearance from the case and since the workman was absent his evidence was closed on 9-6-2003. Advocate Shri S. K. Manjrekar, holding for Adv. Shri Bandodkar for the employer submitted that he is not leading any evidence on behalf of the employer and prayed that award be passed against the workman.

5. In the present case the reference of the dispute was made by the Government at the request of the workman/union as they challenged the action of the employer in terminating the services of the workman. It is a settled law that a party who challenges the legality of the order or the action taken by the employer, the burden lies on that party to prove the legality of the said order or of the action. The Allahabad High Court in the case of V. K. Raj Industry V/s. Labour Court and others reported in 1981 (29) FLR 194 has held that the proceedings appearing in Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the act are applicable. The High Court has held that it is a well settled law that if a party challenges the validity of the order the burden lies upon him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has further held that the provisions of Rule 10-B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute.

6. In the present case the dispute was raised by the workman/union that the action of the employer in refusing employment to the workman with effect from 13-5-98 is not legal and justified. Therefore applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases the burden of proof was on the workman/union to prove that the said action of the employer was illegal and

unjustified. Sufficient opportunities were given to the workman/union to lead evidence in the matter. However the workman remained absent and Shri Subhash Naik the President of Kamgarancha Ekvott withdraw his appearance from the case on the ground that the workman was not contacting him. In the circumstances no evidence came to be led on behalf of the workman in support of his contentions. This being the case there is no material before me to hold that the action of the employer in refusing employment to the workman from 13-5-98 is illegal and unjustified. In the absence of any evidence from the workman the issue referred by the Government cannot be answered in favour of the workman. I therefore hold that the workman/union has failed to prove that the action of the employer in refusing employment to the workman from 13-5-98 is illegal and unjustified. In the circumstances it has to be held that the action of the employer is legal and justified.

Hence I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Sagun Extrusions Ltd., Thivim Industrial Estate, Karaswada, Bardez-Goa in refusing employment to the workman Shri C. S. Dewedi w.e.f. 13-5-98 is legal and justified. It is hereby further held that Shri C.S. Dewedi is not entitled to any relief.

No order as to costs.

Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 12-8-2003 in reference No. IT/11/2001, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 3rd September, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/11/2001

Shri Mayappa R. Gawde,
Rep. by Goa Trade &
Commercial Workers' Union,
Panaji-Goa.

.... Workman/Party I

V/s

M/s Francis Albuquerque,
Managing Director,
M/s Alfa Tiles,
Near Dempo House, Campal,
Panaji-Goa.

.... Employer/Party II

Workman/Party-I - Represented by Adv. Shri Suhas Naik.

Employer/Party-II - Represented by Adv. A. Nigalye.

Panaji, dated 12-8-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5th January, 2001, bearing No. IRM/CON/(7)/99/144 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s. Alfa Tiles, Corlim, in refusing employment to Shri Mayappa R. Gawde, Welder, with effect from 3-5-99, is legal and justified?"

(2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/11/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "Employer") at their factory situated at Corlim Industrial Estate, Corlim, Ilhas-Goa. That the employer is engaged in the business of manufacturing of plain cement and marble mosaic tiles and their workers including the workman are the members of Goa Trade & Commercial Workers Union. That suddenly on 9-12-97 the employer refused employment to the workman without assigning any justified reasons though the workman was working with the employer continuously for more than 20 years. That soon after refusal of employment the workman requested the Managing Director of the employer to reinstate him in service with back wages but his request was not attended to by the Managing Director and therefore the Union through its President sent letters

dated 2-1-98, 16-4-98 and 20-1-99 to the Managing Director with copy to the Dy. Labour Commissioner requesting him to intervene in the matter. That the Dy. Labour Commissioner intervened in the matter and sent notice to the Managing Director asking him to attend the conciliation proceedings. That the management remained adamant and did not attend the conciliation proceedings and since no settlement could be arrived at failure was recorded by the Dy. Labour Commissioner on 23-8-2000. The workman contended that refusal of employment to him is illegal and bad in law and is in contravention of Section 25F of the Industrial Disputes Act, 1947. The workman contended that before refusing employment to him he was not issued any letter of warning, memo, show cause notice or charge sheet. The workman contended that since refusal of employment to him by the employer is illegal and unjustified he is entitled to reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement at Exb.-5. By way of preliminary objection the employer stated that the dispute raised is not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. The employer stated that the union which has raised the purported dispute has no authority or *locus standi* to espouse the dispute and represent the workman. The employer stated that the establishment where the workman was employed is closed finally with effect from 1-1-1999. The employer stated that the workman was employed as a helper in the year 1979 and that he resigned from service on 7-11-84. The employer stated that the workman again approached the partner of the employer for re-employment and since the workman was having fits occasionally and was not coherent in his speech and actions, the partner of the employer had sympathy for the workman and ultimately decided to re-employ him as a helper. The employer stated that after re-employment the condition of the workman started worsening and his mental condition went on deteriorating. The employer stated that since the fits which the workman was getting became more and more frequent and his mental illness further deteriorated and in such a condition other workers feared to work with him, it was not possible to retain the workman in service. The employer stated that by letter dated 9-1-98 the workman was informed that his services will be discontinued from 10-2-98 as he was suffering from ill-health for innumerable years and he was physically and mentally not fit for working. The employer stated that the services of the workman stood terminated w.e.f. 10-2-98 on the ground of continuous ill-health and this fact was informed to the workman vide letter dated 23-2-98 and cheque of Rs. 13,320/- was enclosed along with the said letter informing the workman that the said amount was towards his full and final settlement of dues. The employer denied that the employment was refused to the workman on 9-12-97. The employer stated that they did not terminate the services of the workman on 9-12-97. The employer denied that after the alleged refusal of employment the workman requested the Managing Director to reinstate him in

service. The employer denied that any letter was sent by the Union to the Managing Director but admitted that the partner received a letter dated 16-4-98 from the Secretary of Goa Trade & Commercial Workers Union requesting to allow the workman to resume work. The employer stated that the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.-6.

4. On the pleadings of the parties, issues were framed at Exb.-7 and thereafter the case was fixed for recording the evidence of the workman. On behalf of the workman the statement of one witness was partly recorded. Thereafter the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 5-8-03 for filing the terms of settlement. Accordingly, on this date the parties appeared along with their respective advocates and they filed the terms of settlement dated 5-8-2003. The parties also filed an application dated 5-8-2003 at Exb.-10 praying that consent award be passed in terms of the consent terms dated 5-8-2003. I have gone through the terms of settlement which are duly signed by the parties. I am satisfied that the terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 5-8-2003.

ORDER

1. It is agreed by and between the parties that the Party II has paid to Party I, a sum of Rs. 10,000/- (Rupees ten thousand only) in full and final settlement of his claim in reference No. IT/11/2001 pending in this Hon'ble Industrial Tribunal, Government of Goa, Panaji.

2. The aforesaid sum of Rs. 10,000/- (Rupees ten thousand only) is paid by the Party II to Party I by bearer cheque bearing No. 015775 dated 5-8-2003 drawn on Panaji branch of Goan Peoples Urban Co-operative Bank Ltd., the receipt whereof Party I hereby acknowledges.

3. The Party I hereby agrees and declares that his dispute with the Party II is hereby conclusively settled and he has no claim or demand of whatsoever nature against Party I and its partners.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-8-2003 in reference No IT/37/2001, is hereby published as required by

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 3rd September, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/37/2001

Shri Peter Caldeira,
H. No. 201,
Near KTC Bus Stand,
Madel, Pequeno,
Margao-Goa.

.... Workman/Party I

V/s

M/s The Leela Palace,
Mobor, Cavelossim-Goa.

.... Employer/Party II

Workman/Party-I – Represented by Shri P. Gaonkar.

Employer/Party-II – Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated 11-8-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8th June, 2001 bearing No. IRM/CON/SC/(28)/2001/2454 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. The Leela Palace, Mobor, in terminating the services of Shri Peter Caldeira, A/C Supervisor, with effect from 17-11-2000, is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/37/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb.-3. The facts of the case in brief as pleaded by the workman are that he was working with the Employer-Party II (for short, "Employer") as A/C Supervisor from 24-2-2000 and though he was designated as A/C Supervisor he was carrying out the duties of a

A/C Technician such as that of maintenance, repairs and other technical work. That the post of A/C Supervisor is a permanent post and he was given assurance by the officers of the employer that he will be confirmed in service if he would perform his duties properly. That suddenly on 17-11-2000 his services were terminated by the employer and before terminating his services he was not issued any memo or charge sheet nor any enquiry was conducted against him. That by letter dated 18-11-2000 the workman demanded reinstatement in service but no action was taken by the management on the said letter and therefore industrial dispute was raised before the Dy. Labour Commissioner, Margao. The workman contended that termination of his service by the employer is illegal and unjustified and hence he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb.-5. The employer stated that the workman was working as a A/C Supervisor in the Engineering Department and he was performing duties of supervisory nature and he was drawing wages of Rs. 3500/- p.m., at the time of his termination. The employer stated that the workman was appointed on temporary basis for the period 24-4-2000 to 23-10-2000 and thereafter his period was extended for another 23 days. The employer stated that the workman has not actually worked with the employer for 240 days and therefore he has no lien on the employment. The employer denied that the workman was carrying out the duties of maintenance, repairs and other technical work. The employer denied that their officers had promised to the workman, at the time of his appointment, that the post of A/C Supervisor is of permanent nature or that he would be confirmed in service if he performed the duties properly. The employer stated that since the appointment of the workman was for a specified period on contract basis his services stood automatically terminated after the expiry of the relevant period and therefore the question of issuing any charge sheet or holding any enquiry against the workman did not arise. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.-6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workman. The case was adjourned from time to time at the request of the parties and ultimately the parties submitted that the dispute between them was amicably settled. On 31-7-2003 the parties appeared and submitted that the dispute was amicably settled and they filed the terms of settlement dated 31-7-2003 at Exb. 10 and prayed that award be passed in terms of the said settlement. I have gone through the terms of settlement dated 31-7-2003 which is duly signed by the parties. I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 31-7-2003 at Exb. 10.

ORDER

1. It is agreed between the parties that the management of The Leela Palace, Mobor Goa, shall pay a sum of Rs. 3,500/- (Rupees Three thousand five hundred only) to Mr. Peter Caldeira, in full and final settlement of all his claims arising out of his employment/termination and arising out of the reference mentioned hereinabove.

2. Mr. Peter Caldeira shall accept the said amount of Rs. 3,500/- stated in clause No. 1 above, in full and final settlement of all his claims arising out of his employment with The Leela Palace and reference mentioned therein above and further confirms that nothing further is due and payable to him by the hotel/establishment which can be computed in terms of money, and this settlement satisfy all his claims of reference including his any claim of reinstatement and/or re-employment.

3. The management shall pay the said sum of Rs. 3,500/- by way of cheque No. 923210 dated 11-12-2002 drawn on State Bank of India, Margao Branch, for which Mr. Peter shall acknowledge the said amount by way of receipt.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 31-7-2003 in reference No. IT/45/2001, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 3rd September, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/45/2001

Shri Yeshwant Namdev Shirodkar,
Pilerne, Savlem,
Bardez-Goa. Workman/Party I

V/s

M/s. Nebula Home Products
Pvt. Ltd., Pilerne,
Bardez-Goa. Employer/Party II

Workman/Party-I – Represented by Adv. Shri Suhas Naik.

Employer/Party-II – Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated 31-7-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20th July, 2001 bearing No. IRM/CON/(63)/2000/3198 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Nebula Home Products Pvt. Ltd., Pilerne, Bardez-Goa, in terminating the services of Shri Yeshwant Namdev Shirodkar, Operator, with effect from 14-6-2000, is legal and justified?

If not, to what relief the workperson is entitled?"

2. On receipt of the reference a case was registered under No. IT/45/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "Employer") as an operator from 1st September, 1997 and he was confirmed in service on 1st September, 1998. That he worked with the employer diligently and with clean and unblemished service records. That suddenly on 14-6-2000 he received a letter stating that his services have been terminated with immediate effect. The workman contended that before terminating his service he was not issued any show cause notice nor charge sheet and no enquiry was held against him and also he was not paid any notice pay nor compensation. The workman stated that he raised an industrial dispute on receipt of the termination letter demanding his reinstatement in service with full back wages and continuity of service but the conciliation proceedings held resulted in failure. The workman contended that termination of his service by the employer is illegal and unjustified and therefore he is entitled for reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement at Exb. 5. The employer stated that the workman was initially appointed as a trainee for a period of 6 months from

1-11-96 on stipend of Rs. 1650/- p. m. and on completing training period he was appointed on probation for a period of 6 months from 1-3-98 and on completing the probationary period he was confirmed in service w.e.f. 1-9-98 as an Asst. Operator. The employer stated that after confirmation of the workman the workman became arrogant and careless towards work and company workers including his superiors and therefore he was given warnings on various occasions. The employer stated that inspite of the warnings the attitude of the workman did not change and on 13-6-2000 he physically assaulted, slapped and manhandled the security person within the campus of the establishment and also threatened him with dire consequences. The employer stated that the said security person filed a police complaint at Porvorim Police Station on 15-6-2000. The employer stated that since the entire action and behaviour of the workman created terror and fear psycho in the mind of the said security person and other persons working in the factory and having regard to the threat given by the workman the employer had no choice but to keep the workman out of factory and to dispend with his services. The employer stated that its action is bonafided and fully justified in the circumstances stated above for the smooth functioning of the establishment and maintaining discipline in the factory. The workman thereafter filed rejoinder at Exb.-6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for recording evidence of the parties. Accordingly, evidence of the workman was partly recorded on 3-2-2003. When the case was fixed for cross examination of the workman the parties submitted that they are trying to arrive at an amicable settlement and hence at the request of the parties the case was fixed on 24-7-2003 at 10.30 a.m., for filing terms of the settlement. Accordingly, on this date the parties appeared along with their respective advocates and they submitted that the dispute between the parties is amicably settled. They filed the terms of the settlement dated 24-7-2003 at Exb. 11 and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and their respective advocates. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 24-7-2003 Exb.-11.

ORDER

1. It is agreed between the parties that the management of M/s. Nebula Home Products Pvt. Ltd., (hereinafter referred to as "company") shall pay a sum of Rs. 63,000/- (Rupees Sixty three thousand only) to the Party I/Workman Mr. Yeshwant Shirodkar by way of an A/C payee cheque No. 882855 dated 21-7-2003 drawn on the I.C.I.C.I. Bank, Panaji in full and final settlement of all his claims arising out of his employment/termination and claims arising out of the reference mentioned hereinabove.

2. Mr. Yeshwant Shirodkar shall accept the said amount of Rs. 63,000/- as stated hereinabove in the clause No. 1, in full and final settlement of all his claims arising out of his employment with the company, and shall acknowledge the said amount by way of receipt. Mr. Yeshwant Shirodkar further confirm that nothing further is due and payable to him by the Company which can be computed in terms of money, and this settlement satisfy all his claims of reference including his any claim of reinstatement and/or employment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 6-8-2003 in reference No. IT/19/2003, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 3rd September, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/19/2003

Ms. Carol D'Souza,
H. No. 68, Castelnwado,
Nagoa Pirin,
Salcete-Goa.

.... Workman/Party I

V/s

M/s. Phil Corporation Ltd.,
Tivim Industrial Estate,
Mapusa-Goa.

.... Employer/Party II

Workman/Party-I - Absent.

Employer/Party-II - Represented by Shri Shridharan.

Panaji, dated 6-8-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8-4-2003 bearing No. 28/10/2003-LAB/1098 referred the following dispute for adjudication by this Tribunal.

1. "Whether Ms. Carol D'Souza, officer can be construed as 'Workman' as per section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?"

2. If the answer to (1) above is in the affirmative, then,

Whether the action of the management of M/s. Phil Corporation Ltd., Thivim, Bardez-Goa in refusing employment to Ms. Carol D'Souza, with effect from 16-9-2002, is legal and justified?

3. If the answer to (2) above is in the negative, then what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/19/2003 and registered A/D notice was issued to the parties. The registered A/D notice which was issued to the Employer-Party II (for short, "Employer") was received by them and they were represented by the Company Secretary Shri Shridharan. The registered A/D notice issued to the Workman-Party I (for short, "Workman") was returned unserved with postal remark, "Unclaimed; return to sender". Therefore, a fresh notice was issued to the workman under certificate of posting requiring him to appear before this Tribunal on 30-6-2003 at 10-30 a.m. In spite of the said notice the workman remained absent and therefore his statement of claim was taken as not filed. On this date Shri Shridharan, the company Secretary of the employer remained present and submitted that the employer is not filing any statement of claim/written statement and therefore the case was fixed for award.

3. The reference of the dispute was made by the Government at the instance of the workman since she challenged the action of the employer of refusing employment to her w.e.f. 16-9-2002. It is the workman who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or

Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case the dispute was raised by the workman that she is a workman and the employer has illegally refused employment to her w.e.f. 16-9-2002. The reference of the dispute was made by the Government at her instance. Therefore applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that she is a "Workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947 and that the action of the employer in refusing employment to her w.e.f. 16-9-2002 is not legal and justified. The workman was given opportunity to participate in the present proceedings. However, the workman remained absent and consequently no statement of claim was filed on her behalf. From the conduct of the workman it is clear that she is not interested in pursuing further with the matter. Therefore there is no material before me to hold that the workman Ms. Carol D'Souza is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 or that the action of the employer in refusing employment to her w.e.f. 16-9-2002 is not legal and justified. In the absence of any evidence the reference cannot be answered in favour of the workman. In the circumstances I hold that the workman has failed to prove that she is a 'workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947. Once the workman has failed to prove that she is a 'workman' as defined under the Act, the reference is not maintainable and hence the question of deciding whether the action of the management of the employer in refusing employment to the workman Ms. Carol D'Souza w.e.f. 16-9-2002 is legal and justified and whether she is entitled to any relief does not arise. This question would have arisen only if it was held that the workman Ms. Carol D'Souza is a 'workman' as defined under the Industrial Disputes Act, 1947. Since she has failed to prove that she is a 'workman' as defined under the Industrial Disputes Act, 1947, there is no industrial dispute and hence the reference made by the Government is not maintainable and as such the same is liable to be rejected.

In the circumstances, I pass the following order.

ORDER

It is hereby held that Ms. Carol D'Souza is not a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947. I hereby further hold that since Ms. Carol D'Souza is not a 'workman' there is no industrial dispute and hence reference made by the Government is not maintainable and as such the reference is rejected.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 24-9-2003 in reference No. IT/31/96, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th October, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/31/96

Shri Chandrakant H. Naik,
Rep. by the President,
Arlem Breweries
Employees Union,
C/o. Arlem Breweries Ltd.,
Arlem, Raia-Goa.

.... Workmen/Party I

V/s

M/s. Arlem Breweries Ltd.,
P O. Box No. 306,
Margao-Goa.

.... Employer/Party II

Workman/Party-I - Represented by Adv. Shri D. Kareker.

Employer/Party-II - Represented by Adv. Shri M. S. Bandodker.

Dated 24-9-2003.

AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 9-5-96 bearing No. 28/19/96-LAB referred the following dispute for adjudication of this Tribunal.

Whether the action of M/s. Arlem Breweries Ltd., Arlem, in dismissing Shri Chandrakant H. Naik, Watchman, with effect from 15-7-96, is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/31/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short, 'workman') filed his statement of claim at Exb.-5. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party-II (for short, 'employer') as a Watchman. That on 3-10-94 he received a letter from the General Manager that he is suspended with immediate effect pending enquiry in view of some grave and serious charges levelled against him. That thereafter he received a chargesheet dated 17-10-94 alleging that when he was working in the third shift of 29-9-94 he left the place of duty at the main office gate at about 22.45 hrs. unauthorisedly opened the excise office and started shaving while on duty and left the main office post unmanned. Thereafter he started repairing his Bajaj Chetak Scooter in front of the office next to the Company's Scooter which was parked and while repairing he opened the Company's Scooter, removed the carburettor and exchanged the same with his scooter and emptied the petrol tank. That it was further alleged that he finished the repairing work at 2.00 a.m. and till that time there was no watchman at the main office gate and the above facts were noticed on 1-10-94 when the peon found that the scooter was not starting and the Company's Mechanic observed that the carburettor was not original and it was not fitted properly. That thereafter another chargesheet was issued to him dated 1-11-94 alleging that when he was in the second shift on 29-9-94 at the main gate at about 17.15 hrs. he told one Mr. Khan that he wants to do the overtime in his place at the main office in the 3rd shift as Mr. Joaquim D'Costa would not report for duty in the 3rd shift and that at about 20.15 hrs. he left the place of duty without prior permission or intimation without punching the card and went out of the factory and returned at 22.15 hrs. That an enquiry was conducted into the said chargesheet and after completing the enquiry the enquiry officer submitted findings holding that the charges are proved. The workman contended that the enquiry was not conducted in a fair and proper manner and that the findings of the enquiry officer are perverse. That thereafter the workman received a show cause notice dated 5-7-95 from the Managing Director informing him that he agreed with the findings of the

enquiry officer and it was proposed to dismiss him from the service. That he replied to the said show cause notice by letter dated 12-7-95 and thereafter by letter dated 13-7-95 he was dismissed from service. The workman contended that his dismissal from service is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb.-6. The employer denied that the enquiry was not conducted against the workman in a fair and proper manner or that the findings given by the enquiry officer are perverse. The employer denied that the dismissal of the workman from service is illegal and unjustified or that it has been effected without reasonable cause. The employer stated that the workman had committed serious misconduct and therefore the punishment awarded to him is proper and justified. The employer also stated that the past service records of the workman was not good. The employer denied that the workman is entitled to any relief as claimed by him.

4. On the pleadings of the parties issues were framed at Exb. 7 and since the issue No. 1 pertained to the fairness of the domestic enquiry and the issue No. 2 pertained to perversity of the findings of the enquiry officer both the said issues were treated as preliminary issues. The workman as well as the employer led evidence on the said preliminary issues. This Tribunal by findings dated 25-7-2002 held that the domestic enquiry held against workman is legal, fair, proper and impartial. It was further held that the charges levelled against the workman in the chargesheet dated 1-11-94 are proved and they constitute misconduct as mentioned in the said chargesheet and that in respect of the chargesheet dated 17-10-94 the charges were proved against the workman only to the extent of leaving the place of duty on 29-9-94 from 22.45 hrs. to 2.00 a.m. without permission or intimation and repairing his scooter outside the excise office and that they constituted misconduct as mentioned in the said chargesheet. After the findings on preliminary issues No. 1 and 2 were given the case was fixed for employers evidence. At this stage the parties submitted that they are trying to arrive at an amicable settlement and accordingly the case was fixed on 22-9-03 for filing the terms of settlement by the parties. On this date the parties appeared along with their Advocates and submitted that the dispute between them has been amicably settled and they filed the terms of settlement dated 22-9-03 at Exb.-14. The parties prayed that consent award be passed in terms of the said settlement. I have

gone through the terms of the settlement dated 22-9-03 which are duly signed by the parties and their respective advocates. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 22-9-03 Exb. 14.

ORDER

1. It is agreed between the parties that the management of M/s. Arlem Breweries Ltd., (hereinafter referred to as 'Company') shall pay a sum of Rs. 1,75,000/- (Rupees One lakh seventyfive thousand only) to the Party I/workman Mr. Chandrakant Naik in three instalments by way of an A/c. payee cheques, in full and final settlement of all his claims of whatsoever nature including wages, bonus, gratuity, leave encashment, overtime it any arising out of his employment/termination and claims arising out of the reference mentioned hereinabove.
2. Mr. Chandrakant Naik shall accept the said amount of Rs. 1,75,000/- as stated hereinabove in clause No. 1, in full and final settlement of all his claims arising out of his employment with the Company and shall acknowledge the said amount by way of receipt. Mr. Chandrakant Naik further confirm that nothing further is payable to him by the company which can be computed in terms of money and this settlement satisfy all his claims of reference including his any claim of reinstatement and/or re-employment.
3. It is further agreed between the parties that the company shall pay a sum of Rs. 50,000/- as first instalment of the agreed amount by cheque on 22-9-2003, the second instalment of Rs. 62,500/- shall be paid on 22-10-2003 and the last and final instalment of Rs. 62,500/- shall be paid on 22-11-2003 and the workman Mr. Chandrakant Naik shall accept the said cheque as stated herein from the office of the Party II on the respective dates.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.